IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

AS.No. 368 of 1996()

OS.68/1980 of SUB COURT, MAVELIKKARA

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APPELLANT:

RAMAKRISHNA MATH BELUR HOWRA
CALCUTTA, REPRESENTED BY
SWAMY SAKRANANDA, PRESIDENT
RAMAKRISHNA MATH, TRICHUR

BY ADV. SRI.N.HARIDAS
SRI.P.N.SASIDHARAN

RESPONDENTS:

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1. K.P. RAMAKRISHNAN NAIR, ADVOCATE
HARIPPAD

2. P.CHANDRASEKHARAN NAIR,
PARAMESWARATHU VEETTIL
KARUVATTA VADAKKUMMURI
KARUVATTA VILLAGE

3. R.MADHAVAN PILLAI, VATHUKULANGARA
VADAKKETHIL, PLAPPUZHA MURI
HARIPPAD VILLAGE

4. G. SREEDHARAN NAIR, PATTARUMADATHIL (DIED)
PLAPPUZHA MURI, HARIPPAD VILLAGE

5. G. GOVINDA PILLAI, KALAPPURAKKAL VEEDU
VELLAMKULANGARA MURI
VEEYAPURAM VILLAGE

6. DR. K. KESAVA PILLAI
VARIKOLIL VEEDU
VELLAMKULANGARA MURI
VEEYAPURAM VILLAGE

7. N.K.KURUP, VELLAPARAMBU VEEDU
PLAPPUZHA MURI
HARIPPAD VILLAGE

8. CHANDRAN PILLAI
KADUVEETTIL
PLAPPUZHA MURI
HARIPPAD VILLAGE

*9 BHANUMATHY AMMA AGED ABOUT 72 YEARS
W/O LATE PATTARU MADATHIL SREEDHARAN NAIR
PRESENTLY RESIDING AT ONAMPALLY VEEDU
KARICHALP.O,PAIPPADU,HARIPPAD, ALAPPUZHA DISTRICT

*10. B. SANTHA AGED ABOUT 48 YEARS
D/OLATE PATTARU MADATHIL SREEDHARAN NAIR
PRESENTLY RESIDING AT ONAMPALLY VEEDU
KARICHALP.O,PAIPPADU,HARIPPAD, ALAPPUZHA DISTRICT

*11. B KOMALAM AGED ABOUT 45 YEARS
, D/OLATE PATTARU MADATHIL SREEDHARAN NAIR
PRESENTLY RESIDING AT ONAMPALLY VEEDU
KARICHALP.O,PAIPPADU,HARIPPAD, ALAPPUZHA DISTRICT

* 12 B. GEETHA AGED ABOUT 40 YEARS
D/OLATE PATTARU MADATHIL SREEDHARAN NAIR
PRESENTLY RESIDING AT ONAMPALLY VEEDU
KARICHALP.O,PAIPPADU,HARIPPAD, ALAPPUZHA DISTRICT

(* LEGAL HEIRS OF DECEASED 4TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 9 TO 10 VIDE ORDER DATED 2615/2006 IN I.A 953/2006)

BY ADV. SRI.V.GIRI
SRI.P.G.PARAMESWARA PANICKER
SRI.P.GOPAL

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 13/06/2007, ALONG WITH CRP NO. 911 OF 1996 CRP NO. 912 OF 1996 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CMP NO. 2382 OF 1996 IN A.S. NO. 368 OF 1996

DISMISSED

13-6-2007

SD/- K.PADMANABHAN NAIR,
JUDGE

es

K.PADMANABHAN NAIR . J.

A.S No. 368 of 1996

&

C.R.P Nos. 911 and 912 of 1996

Dated this the 13th day of June 2007

JUDGMENT

Ramakrishna Math Belur is the appellant in the first appeal. It has filed the two civil revision petitions also. The challenge in the first appeal is against a final decree by which a scheme was settled for the administration of Sree Ramakrishna Ashram, Haripad. The civil revision petitions are filed challenging the common order passed by the Court below dismissing an impleading petition and petition to condone the delay in filing the impleading petition.

2.The short facts of the case are as follows:-

Respondent Nos 1 &2 filed a suit under Section 92 of the Code of Civil Procedure for settling a scheme for the administration of Haripad Sree Ramakrishna Ashram on the ground that it is a public religious charitable Trust. Though there were 8 defendants, defendants 2 , 5, & 7 alone contested the suit. The Subordinate Judge found that the Ashram in question was established by Swamy Nirmalananda a direct disciple of Sri.Ramakrishna Paramahamsa. who had established similar Ashrams all over Kerala. The trial court had found that the property covered by Ext.A1 deed was gifted to Swamy Premananda and Nirmalananda and others for the specific purpose for establishing the Ramakrishna Ashram at Haripad. Ext.A2 was another gift deed. The properties covered under Exts A3, A4 , B4, B5 and B8 were acquired for the use and benefit of the

Ashram. It was also found that the object of the gift was to establish an Ashram at Haripad for propagating the teachings and ideals of Sri Ramakrishna Parama Hamsa. It was further held that Sri. Ramakrishna Mutt at Belur was also established for the same purpose. It was further held that the Haripad Ramakrishna Ashram is an independent and separate unit to be administered separately because the original donee of the Ashram is the president of Ramakrishna Mutt at Belur. The Ashram was treated as one affiliated to the Sree Ramakrishna Mutt as far as religious matters are concerned. The preliminary decree was passed on 31-7-1982.

3. After the passing of the preliminary decree Ramakrishna Mutt, Belur filed I.A. 1559/1983 for impleading itself as additional 9th defendant in the suit and I.A. 1558/83 to condone the delay of 348 days occasioned in filing the I.A. for impleading. On 8-4-1996 the learned Sub-judge dismissed the application filed by the revision petitioner for getting itself impleaded as the additional 9th defendant. The Court below passed the final decree accepting the scheme. Challenging that final decree the first appeal is filed. Challenging the common order passed by the court below dismissing the applications for impleading and condoning the delay in filing the impleading application the two Civil Revision petitions are filed.

4. The learned counsel appearing for Belur Mutt has argued that the procedure adopted by the Subordinate Judge is illegal . It is argued that the petition for impleading was filed as early as on 12-7-1983. Those those applications were kept pending till 8-4-1996, the date on which the final decree was passed. It is argued that even in the Preliminary decree the trial court had found that the Ashram at Haripad is one to be treated as one affiliated to Sree Ramakrishna Mutt , Belur or one coming under the control of the Mutt as far as religious matters are concerned. So the fact that the Belur Ramakrishna Mutt is having a substantial interest in the subject matter of the suit is admitted by all parties to the suit. The trial court while passing preliminary judgment had held that the Asram in question and Ramakrishna Ashram Belur were established for the very same purpose i.e to propogate the teaching and ideals of Sri.Ramakrishna Parma Hamsa. It was also found that the President of Belur Ramakrishna Mutt was the donee under he gifts and hence the Ashram at Haripad is to be treated as an independent unit to be administered separately but one affiliated to the Belur Mutt so far as the religious matters are concerned. It is to be noted that all these findings were recorded in the suit without impleading the Belur Mutt. For the reasons best known to the plaintiffs Belur Mutt was not impleaded. The contesting defendants also did not raise a contention that Belur Mutt was a necessary party. A contention of non-joinder was raised on the ground

that executive committee of the Mandalam was a necessary party to the suit. The contention was found against. In view of the evidence adduced, the court below ought not have passed a final decree without impleading Belur Mutt. But much water had flown under the bridge after the passing of the preliminary decree. In view of the finding of the court below that the disputed Ashram is an independent unit of Belur Mutt for the purpose of religious matters it the court ought have considered why the scheme suggested by the Mutt cannot be accepted. If the court below finds that the draft scheme proposed by the Belur Mutt is suitable one it ought to have been accepted . This litigation is pending for the last 27 years. I am also of the view that the parties should make an earnest attempt to amicably settle the matter through the Lok Adalath.

5. The prayer of impleadment was opposed on the ground that the attempt of the revision petitioners is to get the matters settled reopened. A petition filed by the revision petitioner as I.A 1386/86 (a) was also taken as a ground for dismissing the petition for impleading. I.A. 1386/86 (a) was filed by the revision petitioner stating that if the scheme submitted by the Ashram is not accepted as such the scheme allowed to withdraw since the mutt does not want to associate with the Management of the Haripad Ramakrishna Ashram under another Scheme. The mere fact that it is prayed that either the scheme suggested by the Belur Mutt shall be accepted as such or the same may be allowed to be withdrawn

is not a ground to dismiss the impleading application. Belur Mutt is entitled to raise objections regarding the scheme proposed by other parties. . So at least for that purpose for passing an effective scheme the Trial Court ought to have impleaded the revision petitioner. . In this case the reason stated for dismissing the petition to condone the delay and also the petition for impleading is unsustainable and liable to set aside. In fact there was no need to file a petition to condone the delay in filing the impleading petition. The court below ought to have allowed the petition for impleading and heard the objections of the Belur Mutt also. So the common order passed by the court below dismissing the petition for condoning delay and for impleading is illegal and liable to be set aside.

6. The final decree setting aside the scheme was passed without hearing the Belur Mutt which is admittedly having substantial interest over the subject-matter. So the final decree passed in the suit is also unsustainable. I have no other option to set aside the same and remand the final decree application for fresh disposal. The case has to go back.

7. The learned Sub-judge dismissed the petition for impleading because of the dismissal of I.A. 1386/86(a) in which Belur Mutt had prayed that either the scheme proposed by the Mutt may be accepted as such or it may allowed to be withdrawn. Without considering whether the draft scheme proposed by the Mutt can be accepted the learned Subordinate

Judge allowed that petition as withdrawn. That order is also not legal and proper. It is just and necessary to set aside that order also. So I set aside that order and direct the trial court to reconsider that application also.

8. In the result C.R.Ps 911 and 912 of 1996 are allowed. !.A 1558/1983 filed by the revision petitioner for considering the delay and I.A. 1559/1983 for impleading it as additional defendant are hereby allowed. The revision petitioner will be impleaded as the additional defendant in the suit.

9. A.S. 368/1996 is allowed. The final decree and judgment passed in the suit are hereby set aside. The case is remanded for fresh disposal in accordance with law. The parties shall appear before the court below on 11-7-2007. The trial court shall make every endeavour to dispose of the suit as expeditiously as possible at any rate within 6 months from the date of receipt of a copy of the judgment.

K.PADMANABHAN NAIR, JUDGE

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